TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1905.

No. [redacted] 31.

GREENLIEF W. SIMPSON, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 18, 1904.

(19,362.)

(19,362.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 264.

GREENLIEF W. SIMPSON, APPELLANT,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 3, 1904.

1 In the Court of Claims.

GREENLIEF W. SIMPSON
vs.
THE UNITED STATES. } No. 21739.

I.—*Petition.* *Filed March* 5, 1900.

Your petitioner respectfully represents:

1. That heretofore, to wit, on the twenty-second day of December, A. D., 1898, the United States, by and through their legally constituted officer in that regard, who had full authority so to do, invited by advertisement sealed proposals for furnishing fresh beef, delivered in quarters, to the United States troops stationed at posts and camps in the interior of the island of Cuba for the period ending June thirtieth, 1899, a copy of which advertisement is hereunto annexed and made a part hereof, marked "Exhibit A;" that reference was therein made to letter soliciting proposals, dated November fifth, 1898, containing specifications to be adhered to in furnishing the said fresh beef, a copy of which said letter is hereunto annexed and made a part hereof, marked "Exhibit B."

2. That, pursuant to the said advertisement and letter (Exhibits A and B), petitioner submitted, by sealed proposal, a bid to supply the materials called for in the said advertisement, and accom-
2 panied his said bid with the guarantee of two responsible guarantors, who bound themselves as in said advertisement required, and he in all other respects complied with the said advertisement in making said bid, a copy of which said proposal is hereunto annexed and made a part hereof, marked "Exhibit C."

3. That claimant was the lowest bidder, and the award to that effect was duly made to him, and thereafter, to wit, on the fourth day of January, 1899, a contract was duly entered into between Charles P. Eagan, on behalf of the United States, and claimant, for the furnishing of the said fresh beef, a copy of which contract is hereunto annexed and made a part hereof, marked "Exhibit D."

4. That prior to and on the fourth day of January, 1899, when said contract was entered into, there was an interior post or camp in the island of Cuba known as Quemados, at and from which supplies were furnished to about ten thousand troops located in and near said camp, about which number continued to be kept and supplied at and in the immediate vicinity of said post or camp until the end of the contract period; that immediately upon entering into said contract claimant made all the necessary preparations, at large expense, to wit, thirty-five hundred dollars, to supply said interior post or camp, and was then and there and at all times thereafter until the end of said contract period able, willing, and ready to supply said fresh beef at said post or camp and offered so to do, but the

defendant, by and through its officers, refused to permit him to supply the fresh beef necessary for the said troops at the said camp and to be supplied therefrom, but procured, without right, the supplies of such material from others; that on or about the twenty-sixth day of February, 1899, claimant was notified by the officers and agents of the defendant to begin the supply of fresh beef at said post or camp on the first day of March, 1899, and claimant immediately began the supplying
3 of said fresh beef pursuant to said notice, and so continued to do until the fourteenth day of March, A. D. 1899, when, without right and against his protest, he was refused the right under his contract to continue to deliver said fresh beef, although he was able, willing and ready to continue the delivery thereof, as the said contract required, and from the said fourteenth day of March, 1899, until the end of the contract period he was denied the right to deliver the said fresh beef called for by the said contract, against his protest, until the end of the said contract period, he being able, willing and ready at all times to comply with said contract according to its provisions and requirements; that against the action of the defendant, through the refusal of its officers and agents to permit him to perform his part of said contract, he at all times protested and informed the said defendant of his ability, willingness and readiness to comply with every provision of said contract, and he avers that at no time was he in default in any respect in regard to the performance of the said contract by him.

5. That the amount of fresh beef required at the said post or camp between said date of contract and the first day of March, 1899, was about five hundred and sixty thousand pounds, which amount claimant was able, willing and ready to deliver, as required, according to said contract, as hereinbefore averred; that during the contract period, between the fourteenth day of March and the end of the contract term, the amount of fresh beef required at the said post or camp was about one million and eighty thousand pounds, which the claimant was able, willing, and ready to deliver as required, but the said defendant, without right and against the protest of the claimant, refused to permit him to deliver the same; that said defendant procured the required supplies, during the two periods just mentioned, from others, which under said contract the claim-
4 ant had the right and, as above averred, was able, willing, and ready to deliver as required.

6. That the cost to him of furnishing the said fresh beef at the said point, as required by said contract, was not to exceed ten and one-half cents a pound; that the net profit to him under said contract would have been, had he been permitted to comply with the same, not less than four cents a pound, aggregating sixty-five thousand six hundred dollars for the one million six hundred and forty thousand pounds, to which amount he has been damaged by the refusal of the defendant to permit him to comply with said contract.

7. That at the time the said bids were invited, as hereinbefore set forth, also at the time the claimant made his proposals, and also at the time of the execution of the said contract, it was understood and agreed that said proposals and contract should cover all the fresh beef required in the island of Cuba for the subsistence of troops, whether needed at interior points or at ports on the coast, and the said bids were invited and were made with reference to the contractor being obligated to the Government to supply all the fresh beef required in the island of Cuba, whether at interior points or at ports of entry; that defendant had entered into a contract with Swift and Company, by which the said Swift and Company agreed to ship from ports within the United States refrigerated beef for points or ports on the coast of the island of Cuba, and the said contract for refrigerated beef and the said contract with claimant for fresh beef were together to cover all the beef to be supplied for the use of the troops on the said island of Cuba, and the claimant was at all times able, willing and ready to furnish all the fresh beef required or needed by the Government at ports on the coast of Cuba, and so informed the proper officers and agents of the defendant; that on the twenty-fifth day of January, 1899, the claimant was notified by the proper officer and agent of the defendant to supply fresh beef at Cienfuegos and Cardenas, which are seaport towns, and claimant supplied the same as required, pursuant to the said notice, and continued so to do until the end of the contract period; that defendant refused to permit the claimant to supply fresh beef at Havana and Matanzas, both of which are ports of entry, from the date of the execution of said contract until the first day of March, 1899, although he was able, willing and ready so to do, but procured from others the supplies of fresh beef needed and required at said cities, against the protest of said claimant; that claimant was called upon and permitted to furnish fresh beef at Havana from March first, 1899, to March fourteenth, 1899, both inclusive, and at Matanzas from March first, 1899, to March thirty-first, 1899, both inclusive, but was denied the right to furnish said fresh beef at said cities after the respective dates mentioned, and the said defendant procured from others, against the protest of said claimant, the fresh beef required at said cities until the end of the contract period.

8. That the quantity of fresh beef required by the Government at Havana, and which the claimant was entitled to supply, between the date of said contract and the first day of March, 1899, was two hundred and twenty-four thousand pounds, and between the said fourteenth day of March, 1899, and the end of the contract period four hundred and thirty-two thousand pounds, aggregating six hundred and fifty-six thousand pounds; that the quantity required at Matanzas, and which the claimant was entitled to supply, between the date of said contract and the first day of March, 1899, was two hundred and six thousand pounds, and between the said thirty-first day of March and the end of the contract period three hundred and seventy-

eight thousand pounds, aggregating five hundred and eighty-
6 four thousand pounds; that claimant was able, willing and ready at all times to supply the fresh beef required at said cities of Havana and Matanzas, and offered so to do, and he avers that at no time was he in default in any respect in regard to the performance of the said contract by him.

9. That the profit to him for supplying the said six hundred and fifty-six thousand pounds of fresh beef at Havana would have been four cents a pound, and for supplying the said five hundred and eighty-four thousand pounds at Matanzas would have been three and one-half cents a pound, making a total of forty-six thousand six hundred and eighty dollars.

10. That he is a resident of the city of Boston, State of Massachusetts, and a citizen of the United States, and that he has at all times borne true allegiance thereto; that he is the sole owner of the said claim; that no transfer or assignment of the same or any part thereof or of any interest therein has ever been made by him, and that he is justly entitled to the amount herein claimed, to wit, the sum of one hundred and fifteen thousand seven hundred and eighty dollars, after allowing all just credits and set-offs.

Wherefore claimant prays that a judgment may be entered against the United States in favor of claimant, Greenlief W. Simpson, in the said sum of one hundred and fifteen thousand seven hundred and eighty dollars.

GREENLIEF W. SIMPSON, *Claimant.*

J. M. WILSON,
Attorney for Claimant.

STATE OF MASSACHUSETTS, }
County of Suffolk, } ss:

Greenlief W. Simpson, the claimant in the above case, on solemn oath says that he has heard read the foregoing petition by him subscribed and is acquainted with the contents thereof, and that the matters and things in said petition set forth are true, as he verily believes.

——— ———.

Subscribed and sworn to before me this third day of March, A. D. 1900.

ARCHIE G. CROSBY.

{Seal of Archie G. Crosby, Notary Public for the Commonwealth of Massachusetts, U. S. A.}

7 EXHIBIT A.

"Subject: Beef for interior points in Cuba.

"WAR DEPARTMENT,
"OFFICE COMMISSARY GENERAL OF SUBSISTENCE,
"WASHINGTON, *December* 22, 1898.

"SIR: Sealed proposals for furnishing slaughtered fresh beef delivered in quarters to U. S. troops stationed at posts and camps in the interior of the island of Cuba for the period ending June thirtieth, eighteen ninety-nine, will be received by the Commissary General of Subsistence, War Department, Washington, D. C., until twelve o'clock noon, January third, eighteen ninety-nine, and opened immediately thereafter in presence of bidders, deliveries to be in such quantities at such times and in such places as the commissaries of the troops to be supplied shall designate. The numbers and locations of such troops are unknown at this time, and bids must be made upon this understanding. Specifications same as contained in letter soliciting proposals, dated November fifth. Each bid must be accompanied by guarantee of two responsible guarantors binding themselves to pay difference in money between amount of bid and that of next higher bidder to whom contract is awarded if bidder fails to enter into contract with good and sufficient sureties within ten days after award made. Bids not accompanied by guarantee will not be considered.

"Very respectfully, CHAS. P. EAGAN,
"*Commissary General of Subsistence.*"

EXHIBIT B.

"WAR DEPARTMENT,
"OFFICE COMMISSARY GENERAL OF SUBSISTENCE,
WASHINGTON, *November* 5, 1898.

"SIR: The letter of this office of October 24 having stipulated that the cattle for furnishing beef for troops in Cuba must come from outside of cattle-fever regions, and this office having since learned that cattle from outside of such regions are attacked by fever within ten days after landing in that island, all proposals received under said letter have been rejected without being opened, and the following solicitation for proposals is made, viz:

"Sealed proposals for furnishing fresh beef (slaughtered, dressed, and delivered in quarters) to the U. S. troops stationed at posts remote from the seacoast in the island of Cuba for the period ending June 30, 1899, will be received by the Commissary General of Subsistence, War Department, Washington, D. C., until 12 o'clock noon,

November 15, 1898, and opened immediately thereafter in presence of bidders. Deliveries to be made in such quantities, at such times, and in such places as the commissaries of the troops to be supplied shall designate. The numbers and locations of such troops are unknown at this time, and bids must be made upon this understanding.

"Beef to be good in quality and condition, fit for immediate use, from fore and hind quarters proportionally, including all the best cuts thereof, necks cut off at the fourth vertebral joint, breasts trimmed down, shanks of forequarters cut off four inches above the knee joint, of hindquarters eight inches above the hock joint;
8 necks, shanks, kidney tallow, and beef from bulls and stags and from females (except spayed heifers) to be excluded. The cattle for furnishing the beef must dress not less than 400 pounds per carcass. Bidders will state how soon they can begin delivering, which must be at the earliest date practicable, and will state the price per pound at which their beef is offered.

"Beef cattle, or dressed beef, imported into Cuba for the purposes of this contract will be admitted free of duty.

"Beef presented for delivery not of the kind stipulated for will be rejected by the commissaries, subject to appeal to commanding officers, whose decisions will be final.

"The successful bidder will be required to give bond in the sum of $10,000 for the faithful performance of his contract.

"Address proposals in sealed envelopes marked 'Proposal for beef in Cuba,' or by telegraph, to the undersigned, at the War Department, Washington, D. C.

"Very respectfully, CHAS. P. EAGAN,

"*Commissary General of Subsistence.*"

EXHIBIT C.

Copy of Proposal.

"Riggs house; O. G. Staples, proprietor.

"WASHINGTON, D. C., *January 3d*, 1899.

"Brig. Gen. C. P. Eagan, commissary of subsistence.

"DEAR SIR: In accordance with the terms of specifications sent from your office under dates of November 5th, and December 22d, 1898, I will furnish beef for the United States troops at posts in the interior of Cuba at 14½c. per pound.

"Very respectfully, G. W. SIMPSON,

"*27 South Market Street, Boston, Mass.*"

9 EXHIBIT D.

Copy of Contract.

"Articles of agreement entered into this 4th day of January, 1899, between Brigadier General Charles P. Eagan, Commissary General of Subsistence, United States Army, of the first part, and Greenlief W. Simpson, of the city of Boston, county of Suffolk, State of Massachusetts, of the second part.

"This agreement witnesseth, that the said party of the first part, for and in behalf of the United States of America, and the said party of the second part, for himself and his legal representatives, have mutually agreed, and by these presents do mutually agree, as follows, viz:

"I. The said party of the second part shall deliver, to the commissaries of the United States troops stationed at such posts and camps as are situated in the interior of the island of Cuba, at such prescribed hours on such days as, under the direction of their commanding officers they shall designate, such quantities of FRESH BEEF, slaughtered, dressed and delivered in quarters, good in quality and condition, fit for immediate use, and from fore and hind quarter meats proportionally, including all the best cuts thereof, as from time to time they may require. Necks shall be cut off at the fourth vertebral joint, and breasts trimmed down; the shanks of fore quarters shall be cut off four inches above the knee joint, and of hind quarters eight inches above the hock joint. Necks, shanks, and kidney tallow, and beef from bulls and stags, and from females (except from spayed heifers) shall be excluded from delivery. The cattle for furnishing the beef must dress not less than four hundred (400) pounds per carcass. Cattle imported into Cuba by the party of the second part for the purposes of this contract are to be admitted free of duty.

"II. Whenever the fresh beef presented at any post for delivery under this contract is, in the opinion of the commissary thereat, not of the kind stipulated for, he shall reject the same, subject to
10 appeal by the party of the second part to the commanding officer, whose decision shall be conclusive on all persons concerned.

"III. In case of failure of the said party of the second part to deliver fresh beef as herein stipulated, the commissary is authorized to supply by open purchase any deficiency resulting from such failure (the beef so procured to be of the kind herein specified, as nearly as practicable), and the said party of the second part shall be charged with any excess of cost over that of furnishing at contract price.

"IV. The said party of the second part shall receive for the fresh

beef accepted from him hereunder, fourteen and one-half (14½) cents per pound to be paid by the commissary at the end of each calendar month, or as soon as practicable thereafter, in the funds furnished for the purpose by the United States.

"V. No member of, or delegate to, Congress, nor any person belonging to, or employed in, the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise herefrom.

"VI. This contract shall be in force from the 5th day of January, 1899, to the 30th day of June, 1899, inclusive, or such less time for any post as the Commissary General of Subsistence, U. S. Army, may direct.

"In witness whereof the undersigned have hereunto placed their hands the date first hereinbefore mentioned.

"CHAS. P. EAGAN,
"*Brigadier General, U. S. Army,*
"*Commissary General of Subsistence.*
"GREENLIEF W. SIMPSON.

"Witnesses:
"W. L. ALEXANDER,
"*Residence, Washington, D. C.*
"R. S. KEARNEY,
"*Residence, Alexandria Co., Va.*"

"WAR DEPARTMENT,
"OFFICE COMMISSARY GENERAL OF SUBSISTENCE,
"WASHINGTON, D. C., *January* 25, 1899.

"OFFICIAL COPY respectfully furnished to the chief commissaries of subsistence of departments in the district of Cuba for reference to the commissaries at posts and camps in the interior of the island of Cuba for their information.

"GEORGE B. DAVIS,
"*Acting Commissary General of Subsistence.*"

11 II.—*Traverse. Filed March* 23, 1904.

In the Court of Claims of the United States, December Term, A. D. 1903.

GREENLIEF W. SIMPSON
vs.
THE UNITED STATES. } No. 21739.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

III.—*Argument and Submission of Case.*

This case was argued on the 23d and 24th days of March 1904, and submitted.

12 IV.—*Findings of Fact and Conclusion of Law. Filed by the Court.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact. Filed Apr. 4, 1904.

I.

Claimant is a citizen of the United States, a resident of Brookline, Massachusetts; that he has at all times borne true allegiance to the United States; that he is the sole owner of the claim embraced in this suit, and that no transfer or assignment of said claim, in whole or in part, or of any interest therein, has ever been made by him.

II.

On October 24, 1898, defendant solicited proposals for "furnishing fresh beef (slaughtered, dressed, and delivered in quarters) to the U. S. troops stationed at posts *remote* from the seacoast, in the island of Cuba, for the period ending June 30, 1899." Said invitation for proposals contained, among others, the condition that the cattle so furnished should come from outside of cattle-fever regions; which condition defendant thereafter reconsidered and withdrew, and accordingly all proposals received in response to said invitation were rejected unopened.

III.

Thereupon, under date of November 5, 1898, defendants invited new proposals for "furnishing fresh beef (slaughtered, dressed, and delivered in quarters) to the U. S. troops.

A true copy of said invitation for proposals of November 5, 1898, is set forth in the petition herein.

13 IV.

The defendant, under date of November 15, 1898, made award of said contract to the lowest bidder. The latter, however, failed to enter into said contract, as did also the next lowest bidder; and thereupon, under date of December 22, 1898, defendant again solicited proposals.

A true copy of said invitation for proposals of December 22, 1898, is set forth in said petition.

V.

Pursuant to the advertisement last aforesaid, claimant, under date of January 3, 1899, made and filed with defendant a proposal to furnish said beef at 14½ cents per pound.

14 VI.

Claimant was the lowest bidder, and was accordingly awarded the contract under date of January 4, 1899, and formal contract, in writing was on the same day entered into between claimant and defendants.

VII.

During the period in which the above several invitations for proposals were made for furnishing fresh beef (slaughtered, dressed, and delivered in quarters) to the United States troops stationed at "posts *remote* from the sea-coast" (as per invitations of October 24 and November 5, 1898), and at "posts and camps in the *interior* of the island" (as per invitation of December 22, 1898), there was a subsisting contract between defendant and Swift & Co., of Chicago, Illinois, dated July 1, 1898, for furnishing "refrigerated, chilled, or frozen fresh beef in bulk, delivered at points on the *seacoast* of Cuba, occupied by the army," the beef to dress 600 pounds to the carcass. Said contract was to cover a period of at least three months, with the right of extension to December 31, 1898, if military occupation of the island continued to that date, and, by mutual agreement, subject to further extension, not beyond June 30, 1899.

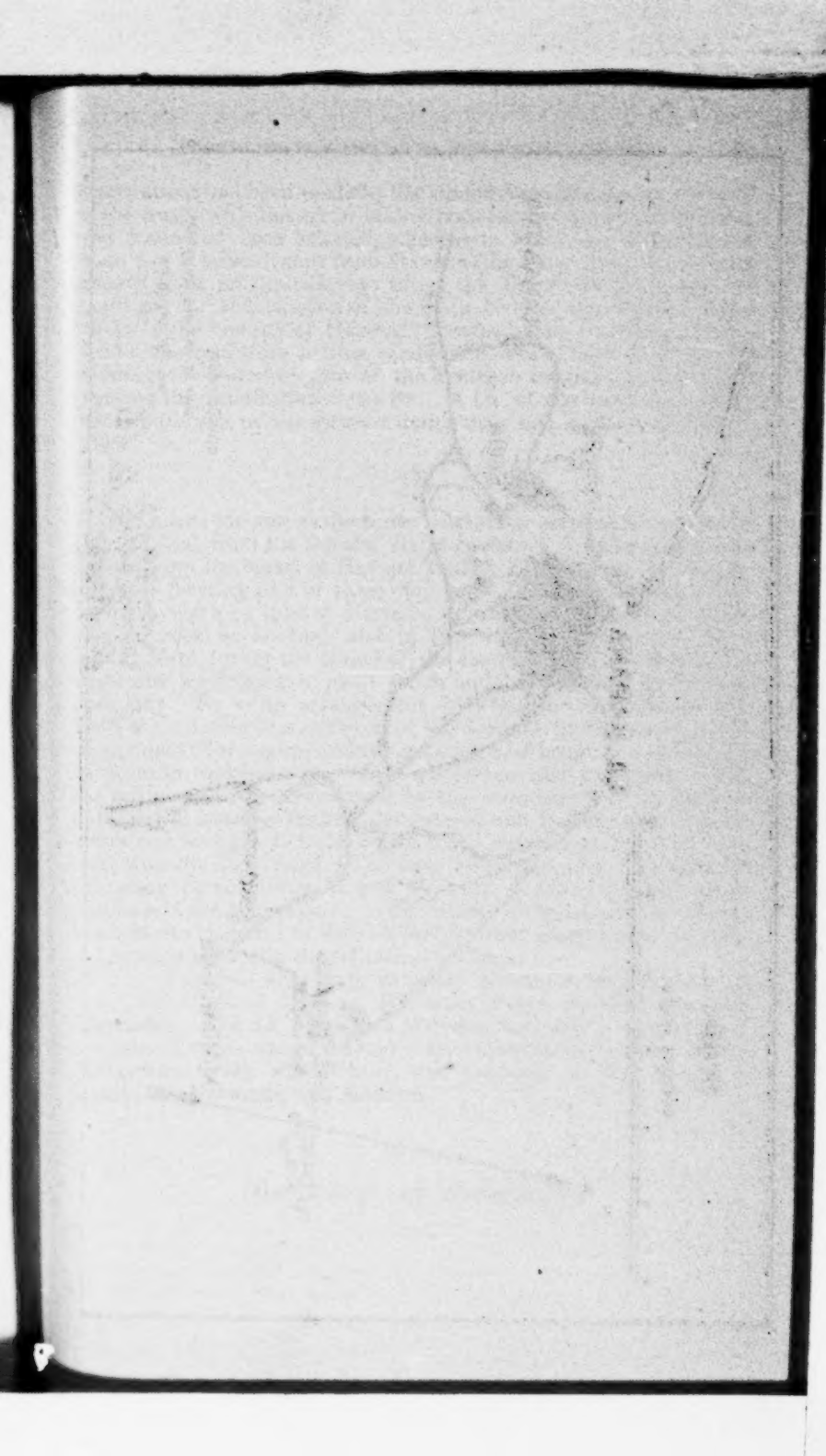
This contract required the erection, operation, and maintenance by Swift & Co. of certain refrigerator plants or buildings on the *seacoast* of the island of Cuba for the purpose of receiving and storing said shipments of beef.

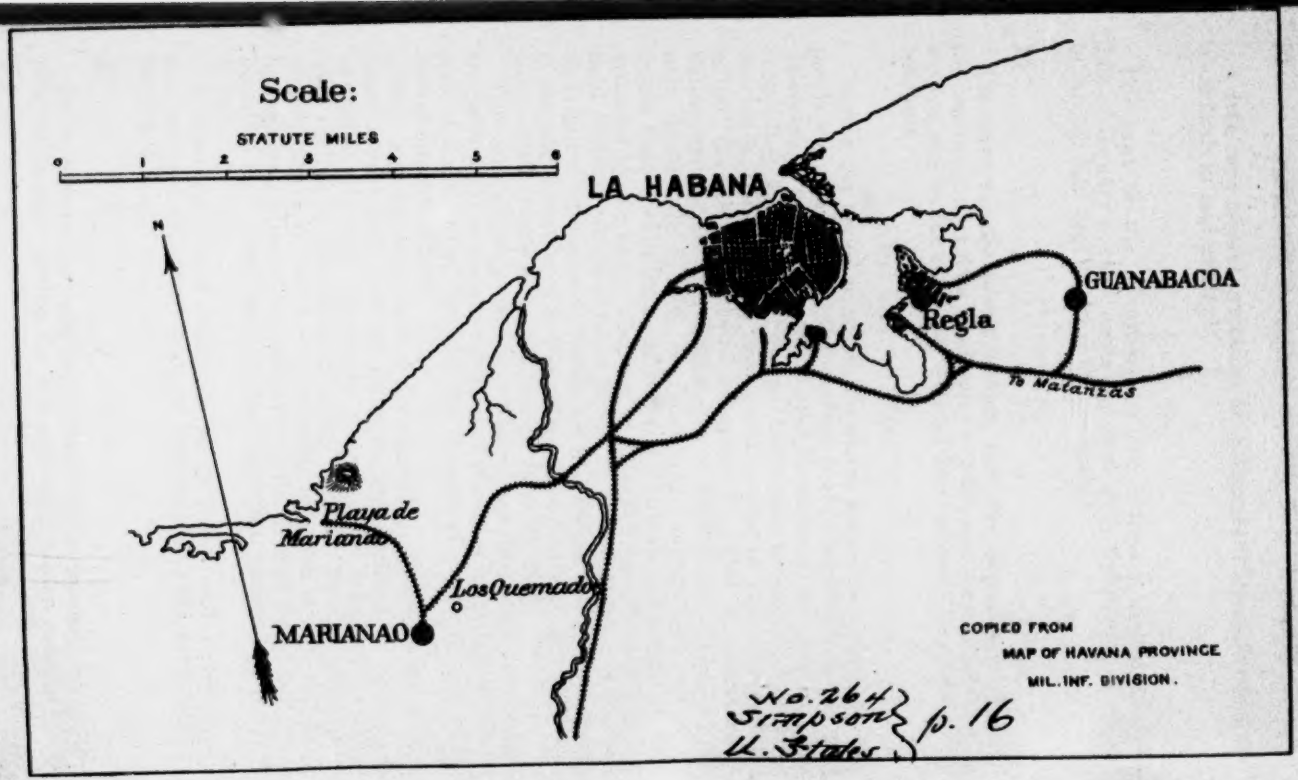
Said contract with Swift & Co. expired on December 31, 1898, as therein provided; and the latter having declined to agree to an extension, although thereunto requested by defendant, proposals were invited by defendant February 6, 1899, "for furnishing refrigerated, chilled, or frozen beef, in bulk, delivered at such points and in such quantities on the *seacoast* of Cuba as shall from time to time be called for." Said contract was thereafter awarded to said Swift & Co.

A true copy of said invitation for proposals and a true copy of said contract with Swift & Co., of February 23, 1899, are set forth in finding XX.

15 VIII.

Prior to entering into the contract with claimant, hereinbefore referred to, and during the fall and early winter months of 1898,

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STATUTE MILES
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LA HABANA
GUANABACOA
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Los Quemados
MARIANAO
COPIED FROM
MAP OF HAVANA PROVINCE
MIL. INF. DIVISION.
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Simpson
U. States
p. 16

preparations had been made by the United States (under the protocol of the treaty with Spain) for taking possession of the island of Cuba, and a site had been selected, adjacent to Marianao, at Quemados, some 8 or 9 miles distant from Havana (the latter being the nearest *seacoast* point on the island to which the United States transports could go), for the location of the main body of the United States troops in the vicinity of Havana. Troops began to arrive, and the defendant, from time to time, made purchases of beef on the island pending the entering into of the Simpson contract, as well, also, pending the establishment, by Swift & Co., of the necessary refrigerator buildings on the seacoast under their said contract of July 1, 1898.

IX.

Los Quemados was, at the times hereinafter referred to, a town in Cuba distant from the Concha Railway station 6 miles which was distant from the wharf at Havana 2 miles, as shown on the map or diagram forming part of these findings. It was distant 2½ miles from the beach or inlet of Marian-o, at which place, however, there was no dock or landing, and, in fact, no military supplies were landed there during the period of the contract. At Los Quemados there was a refrigerator plant which had been erected by Swift & Company. By some arrangement between the commissary and Swift & Company this refrigerator was utilized by the commissary department "for storing and refrigerating beef bought for the troops in order to make the meat more wholesome and palatable." But the refrigerator was never used by the commissary or by Swift & Company as a storage for beef slaughtered and dressed in the United States and brought to Cuba by Swift & Company under their contract with the defendants. The facts relating to beef furnished for the army by the claimant and by Swift & Company and other parties and the facts relating to the refusal of the defendants' officers to allow the claimant to furnish beef at that place under his contract appear in the following findings:

16 The following map correctly illustrates the location of the cities of Habana, Marianao, Playa de Marianao, and Quemados. The dot just above Marianao and near the junction of the two railroads, shown on said map, indicates the location of the refrigerator from which beef was supplied to the troops at Quemados, Marianao, and Habana.

(Here follows map marked p. 16.)

17 X.

On the 10th January, 1899, the claimant was ready to furnish beef on the coast of Cuba under his contract referred to in finding 1. He notified Lieut. Col. Abiel L. Smith, chief commissary of the division of Cuba and also depot commissary at the port of Havana, that he was ready and willing to deliver beef under his contract. On the 26th January, 1899, he demanded of Colonel Smith that he be allowed to furnish beef at Los Quemados, where there were stationed at the time about 7,000 troops. Colonel Smith refused to allow the claimant to deliver, and he thereupon protested against the decision of the chief commissary and also cabled his protest to the commissary-general at Washington, and on the 30th January also sent to Colonel Smith a protest in writing, which protests were in the words following:

"My agreement General Egan I supply all troops except when supplied by Swift, Smith continues buying other parties principal points, this unjust, must cease, cable him orders, answer."

* * * * * * *

"I hereby beg to file a protest against your awarding any contract for supplying fresh beef to the troops stationed on the island of Cuba as I still maintain that in accordance with my agreement with Gen. Egan, that I am to furnish all the fresh beef required for the troops, the only exception being that furnished under contract with Messrs. Swift & Company."

On the 27th January, 1899, Colonel Smith cabled the commissary-general at Washington as follows:

"I request instructions in regard to receiving beef from Simpson's contract at 14½ cents in Havana and other coast points when the supply of refrigerated beef fails, or whether I should endeavor to purchase for immediate needs at lower rate. The arrangement heretofore made expired, and as supply of refrigerated beef is only sufficient for few days, the rights of Simpson must be settled immediately."

To this Acting Commissary-General Davis replied January
18 27, 1899:

"Simpson's contract embraces posts and camps in interior of island and not seacoast points."

On January 28, 1899, Colonel Smith wrote the claimant as follows:

"I have the honor to inform you that the commissary-general has decided that your contract covers delivery 'at posts and camps in interior of island and not seacoast points.' Therefore, purchases at seacoast points have to be made in open market when the supply of refrigerated beef is not available."

During the remainder of the month of January and during the month of February the chief commissary at Havana purchased beef on the hoof for the use of the troops at Los Quemados from third parties; that is to say, neither from the claimant nor Swift & Company, obtaining the same at the rate of 10½ cents per pound.

For the month of February a contract was entered into between Colonel Smith and one Juan Dorta, and on the 10th February, 1899, Colonel Smith telegraphed the commissary-general, "Agreement with Juan Dorta for purchase of beef here during February at 10½ cents has been made and can not be broken by me." Whereupon, on February 11, 1899, Acting Commissary-General Davis telegraphed to Simpson, at Boston, Mass.:

"You understand we can not, in interpretation made yesterday, abrogate contract with Dorta for this month, but will prevent any new ones from being made." To which the claimant replied, February 11, 1899, as follows:

"Your telegram is duly received, and I fully understand that the contract of Dorta can not be abrogated. You informed me that Swift & Co., had arranged to make two shipments of beef, which will probably furnish all the troops will require for this month, which will cancel Dorta's agreement, and I am convinced that he will be glad to be relieved from furnishing any more beef at
19 10½ cents. I trust there will be no further misunderstanding, and shall do all in my power *of* carry out the contract in a manner satisfactory to yourself, the commissary department, and the troops as well."

On the 19th February, 1899, the commissary-general cabled Colonel Smith as follows: "Call upon Simpson in future without further competition when refrigerated beef is not available." On the 21st February Colonel Smith notified the claimant as follows:

"SIR: I have to advise you that, acting under instructions contained in telegram of the commissary general of the 10th instant, I have instructed commissaries throughout the island to call upon you to furnish fresh beef under your contract whenever Swift & Co., cannot deliver fresh beef (refrigerated) under their contract."

Under this authority the claimant furnished the beef at Los Quemados from the 1st to the 13th of March, 1899, inclusive, under and at his contract rates, and was fully paid therefor.

On March 10 Colonel Smith cabled the commissary-general, "Have refused native beef from Swift until I receive instructions requested the sixth instant," to which Captain Davis (who, up to the 3d of March had been acting commissary-general, but who was not commissary-general on the 10th of March) replied:

"If Swift & Co., furnish refrigerated beef acceptable to you, quality according to contract, from refrigerator, it is in compliance with contract, even if not sent in transports. Agreement accepted only when transportation fails. We can not allow for transportation."

As this decision made the acceptance depend on the beef being of the "quality according to (Swift's) contract," Colonel Smith, who had not yet been furnished with copy of Swift's new contract, telegraphed March 10, 1899:

"Swift can not furnish beef which will dress 600 lbs., but can

furnish as good as Simpson. Shall I accept from Swift beef
20 of quality specified in Simpson's contract, but refrigerated
here, at Swift's contract price? No copy of Swift's new contract yet received."

Major Davis decided by telegraph on March 11, 1899:

"Quality being same, take Swift's. Price lower. See letter February 10, 1899."

In consequence of these instructions Colonel Smith ceased to take beef from the claimant after the 13th of March, and accepted Cuban beef from Swift & Company at a lower price than that which was to be paid the claimant. The claimant protested against this.

On the 4th May, 1899, the Secretary of War decided,

"1. That the camp at Quemados is an interior post within the meaning of the language used in the contract with Simpson dated January 4, 1899.

"2. That the claim of contract right to supply said fresh beef to the troops stationed at said point is sustained.

"3. The attention of the commissary department is directed to paragraph VI of said contract with Simpson, which reads as follows:

'VI. This contract shall be in force from the 5th day of January, 1899, to the 30th day of June, 1899, inclusive, or such less time for any post as the commissary general of subsistence, U. S. Army, may direct.'

"4. The commissary-general of subsistence is at liberty to take such action under this provision of the contract as in his judgment the best interests of the Government require."

Under this authority of the Secretary of War, on the 9th May, 1899, the commissary-general sent the following notice to the claimant:

"You are informed that the suspension of the delivery of fresh
beef under your contract as per notification to you from Major
21 A. L. Smith, chief commissary, division of Cuba, dated March
12, 1899, is hereby made to cover the life of the contract in so far as it relates to the post of Quemados. This annulment of your contract for this point is in accordance with a suggestion of the acting Secretary of War, dated May 4, 1899, and by the authority conferred in paragraph VI of said contract."

The claimant would have realized a profit upon the beef furnished at his contract price at Los Quemados if he had been allowed to furnish it.

If the claimant is entitled to recover profits for all of the beef which he was not allowed to furnish at Los Quemados between January 10 and June 30, 1899, he should recover $31,439.90.

If he is entitled to recover for only the beef which he was prevented from furnishing at Los Quemados between the 10th January and the 9th May, 1899, he should recover $29,398.42.

22 XI.

For several months prior to entering into said contract by claimant, the latter had investigated the conditions existing on the island of Cuba; had ascertained that the ration of beef for a soldier in Cuba was one pound per man per day; and that from 25,000 to 30,000 soldiers, possibly more, would be quartered on the island; all of which matters were taken into account by claimant in computing his contract price. The post and camp at Quemados was maintained throughout the term of the Simpson contract, some 7,000 soldiers being quartered there at or about the beginning of his said contract term, and additional troops sent there, numbering in all, at said post and camp, some 16,000 men in February, 1899, and about 10,000 in March, 1899; and said post and camp was continued until the final withdrawal of the volunteers from the island, which was subsequent to the expiration of the Simpson contract, July 1, 1899.

XII.

Prior to entering into said contract claimant inquired of the then United States commissary general, Charles P. Eagan (by, through, and under whom said contract was to be made), to ascertain the exact extent and scope thereof, and from him ascertained that it was the purpose and intent of the department to cover the *entire* beef supply for the island of Cuba by the two contracts, Swift & Co. for *refrigerated* beef slaughtered in the United States and delivered at points on the *seacoast* of the island, and claimant (Simpson) for *fresh* beef slaughtered, dressed, and delivered at posts and camps in the *interior* of the island, and that, when Swift & Co. could not so furnish, claimant's contract covered the *entire* island, both *interior* and *seacoast*.

XIII.

That claimant made all necessary arrangements, at considerable expense, preparatory to entering into and performing said contract with defendant (dated January 4, 1899, as aforesaid), in the matter of securing cattle, engaging steamer space for their transportation, etc., etc.; in addition to which he secured and employed agents upon the island of Cuba in the matter of making delivery to defendant of the beef aforesaid, and also sent there an agent in that behalf from the United States, who, arriving there on January 10, 1899, reported to said chief and depot commissary, Lieut. Col. Smith, U. S. A.

23 XIV.

That the cost to claimant of delivering beef to defendant, under his said contract at Quemados, was 10½ cents per pound; his contract price therefor was 14½ cents per pound, thus leaving him a profit of 4 cents per pound upon all beef delivered, or which, under his said contract, he was entitled to deliver to defendant at said place.

XV.

The total amount of beef purchased by and supplied to defendant from and by others than claimant at said *interior* post or camp of Quemados, during the term of claimant's said contract (excluding the period of *fourteen* days in March, 1899, aforesaid), was 785,997½ pounds.

XVI.

The *first* contract between defendant and Swift & Co. for furnishing refrigerated, chilled, or frozen beef, slaughtered in the United States, and to be delivered at points on the *seacoast* of Cuba (*supra*), expired by limitation on December 31, 1898. The subsequent and *second* contract between defendant and said Swift & Co. (covering the same subject-matter) was not entered into until February 23, 1899 (*supra*).

Intermediate said two dates, as well also subsequent to the date of said *second* contract with Swift & Co., and against the protest of claimant, defendants purchased (from others than claimant) beef slaughtered in Cuba, and used, with or without refrigeration, at the city of Havana and at Matanzas, Cuba, from January 1 to June 30, 1899, covering the term of claimant's contract, as aforesaid, aggregating 683,924 pounds, as follows:

Name.	City of Havana.	Matanzas.	Total quantities.
	Lbs.	*Lbs.*	*Lbs.*
Pryor, Davis and Hall	120,427	72,469	192,896
Juan Dorta	100,780	.....	100,780
Juan E. Ramirez	....	119,530½	119,530½
Total	....	.....	413,206½
Swift & Co. furnished to the United States beef slaughtered in Cuba	....		270,717½
Grand total	....		683,924

24 On the 18th of January, 1899, the chief commissary of Cuba, A. L. Smith, ordered claimant to supply beef at coast points as follows:

"OFFICE PURCHASING AND DEPOT
"COMMISSARY, U. S. ARMY,
"HAVANA, CUBA, *January* 18, 1899.

"G. W. Simpson (care J. F. Berndes & Co.), box 349, Havana, Cuba.

"SIR: I have to inform you that I have this day notified, by

wire, the commissaries at the following points to call on you for fresh beef, under your contract, from and after date opposite each.

* * * * * * *

"Trinidad, January 23, 1899.

* * * * * * *

"Cienfuegos, January 21, 1899.

* * * * * * *

"Respectfully, A. L. SMITH,
"*Lieut. Col., C. S., U. S. A.,*
"*Chief Commissary, Division of Cuba.*"

And on the 25th of January his order for beef at *coast points* was as follows:

"OFFICE PURCHASING AND DEPOT
"COMMISSARY, U. S. ARMY,
"HAVANA, CUBA, *January* 25, 1899.

"G. W. Simpson, Havana, Cuba.

"SIR: In accordance with your verbal request of today, I have to advise you that the following points are to be supplied by you under your contract.

* * * * * * *

"Trinidad.
"And until Swift & Co. are prepared to furnish:
"Cienfuegos.
"Cardenas.
"In addition the following points named by Colonel Wilson in telegram of the 12th instant. Copy enclosed.

"Respectfully, A. L. SMITH,
"*Lieut. Col., C. S., U. S. A., Chief and Depot C. S.*"

On February 18, 1899, Major A. L. Smith telegraphed from Havana:

"Please inform me if Simpson should in future be called upon without further competition to supply beef here and elsewhere in Cuba when refrigerated beef is not available. Immediate decision urgently needed."

The answer of Acting Commissary General Davis, February 19, 1899, was:

"Call upon Simpson in future without further competition when refrigerated beef is not available."

25 On February 20, 1899, Major A. L. Smith telegraphed to the commissaries at Matanzas, Pinar del Rio, Guanajay, Cienfuegos, Trinidad, Sancti Spiritus, Nuevitas, Puerto Principe, Gibara, and Manzanillo, as follows:

"Under authority of telegram of the Commissary General of 19th instant, you are directed to call in future on Simpson for fresh beef, without further competition, when refrigerated beef is not available."

Of these Matanzas, Cienfuegos, Trinidad, Gibara, and Manzanillo were on the coast.

Thereafter Colonel Smith wrote as follows:

"HEADQUARTERS DIVISION OF CUBA,
"OFFICE CHIEF COMMISSARY,
"HAVANA, *February* 21, 1899.

"Mr. G. W. Simpson (c/o J. F. Berndes and Co.), 64 Cuba, Havana.

"SIR: I have to advise you that, acting under instructions contained in telegram of the Commissary General of the 19th instant, I have instructed commissaries throughout the island to call upon you to furnish fresh beef under your contract whenever Swift and Co. cannot deliver fresh beef (refrigerated) under their contract.

"Respectfully,
A. L. SMITH,
"*Lt. Colonel, C. S., U. S. Army,*
"*Chief and Depot Commissary.*"

And on February 23, 1899, Captain Peterson, depot quartermaster at Matanzas, addressed Simpson as follows:

"MATANZAS, CUBA, *February* 23, 1899.

"G. W. Simpson & Co., 64 Cuba, Havana, Cuba.

"DEAR SIRS: Please prepare to supply the following quantities of fresh beef at the places designated on and after March 1st, 1899:

"About 4,500 lbs. daily at Matanzas.

"About 275 lbs. daily at Cardenas.

"About 275 lbs. daily at La Union.

"It will be necessary for you to slaughter on or prior to the 28th inst. to make the issue for March 1st, 1899.

"Very respectfully,
M. R. PETERSON,
"*Captain C. S., U. S. Army,*
"*Purchasing and Depot Commissary.*"

26 XVII.

Claimant was at all times during the entire contract period aforesaid able, ready, and willing to furnish and supply the beef aforesaid, and protesting against the action of defendants in ignoring the same (*supra*).

XVIII.

The beef last hereinabove referred to was slaughtered on the island of Cuba and used, with or without refrigeration, and purchased from divers persons, including said Swift & Co. In making such pur-

chases from Swift & Co. defendant waived the express provisions of the contract with said firm in that behalf, requiring such beef to be slaughtered in the United States, and delivered, refrigerated, chilled, or frozen, at points on the *seacoast*; as well, also, waived the contract provision as to said Swift & Co., that the beef should dress not less than 600 pounds to the carcass.

XIX.

The cost to claimant of delivering beef to defendant, under his said agreement and contract, at the city of Havana was ten cents per pound, and, at Matanzas, was 11 cents per pound; his said contract price, covering both places, was 14½ cents per pound, thus leaving him a profit of 4½ cents and 3½ cents per pound respectively upon all beef delivered, or which under his said agreement and contract he was entitled to deliver to defendant at said two places, or an *average* profit of 4 cents per pound covering said two places.

Estimating said quantity of 683,924 pounds (*supra*) at a profit to claimant of 4 cents per pound upon the beef so purchased and used by defendant at the city of Havana and at Matanzas during the period of claimant's contract (said quantity having been furnished and supplied by others than claimant, in violation of his said contract and rights, and against his protest, as aforesaid), the same would have yielded claimant a profit, and to which profit he was entitled, aggregating the sum of $27,356.96, no part of which said sum has, however, been paid him.

27 XX.

The following proposal and contract was also entered into between the United States and Swift & Co.

WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL OF SUBSISTENCE,
WASHINGTON, *February* 6, 1899.

Proposals will be received at this office until 12 o'clock noon, February 16, 1899, at which time they will be opened in the presence of bidders for furnishing refrigerated, chilled, or frozen beef, in bulk, delivered at such points and in such quantities on the seacoast of Cuba as shall from time to time be called for by the Commissary-General of Subsistence of the United States Army.

The Government will furnish the steamers for the transportation of beef from points on the coast of the United States to Cuba.

The contractor will be required to build and operate such refrigerator plants at Cuban points as may be required to keep an ample supply of beef on hand. Transportation from the United States for material required for the construction of these refrigerator plants and for the men to operate them will be furnished by the Government.

The beef shall be of uniform good quality from fat steers, United States Government inspected, weighing not less than six hundred (600) pounds dressed weight per carcass. It is to be free from fore and hind quarters porportionally, including all the best cuts thereof; necks cut off at the fourth vertebral joint and breasts trimmed down; shanks of forequarters cut off four inches above the hock joint and of the hindquarters eight inches above the hock joint; necks, shanks, and kidney tallow excluded from delivery. The beef is to be properly clothed for its protection and proper handling, and so preserved by the refrigeration on shipboard and at the refrigerator buildings as to be at all times perfectly good and fit for use. The successful bidder will be required to give a bond for his compliance with his contract under this advertisement. No bids will be considered which are not in strict compliance with each and every requirement of this advertisement. Envelopes containing proposals will be marked: "Proposals for fresh beef, to be opened February 16th," and addressed to Colonel George B. Davis, acting Commissary-General of Subsistence, Washington, D. C.

Articles of agreement entered into this twenty-third day of February, eighteen hundred and ninety-nine, between Colonel George B. Davis, acting Commissary-General of Subsistence, United States Army, of the first part, and Swift and Company, a corporation existing under the laws of the State of Illinois, doing business in the city of Chicago, county of Cook, and State of Illinois, of the second part.

This agreement witnesseth, that the said party of the first part, for and in behalf of the United States of America, and the said party of the second part, for themselves and their legal representatives, have mutually agreed and by these presents do mutually agree as follows, viz:

I. The party of the second part shall furnish to the United States, for the use of the Army of the United States, such quantities of refrigerated, chilled, or frozen beef in bulk, delivered at points on the seacoast of the island of Cuba, occupied by the Army of the United States, as shall from time to time be called for by the acting Commissary-General of Subsistence of the United States Army. The party of the second part shall be required to make shipments only at such ports of the United States as have tracks connecting railroads with docks, whereby shipments of fresh beef may be transferred directly from cars to ship refrigerators.

II. Army transports will be provided for the purpose of carrying refrigerated, chilled, or frozen beef under this contract, but if it shall, in the opinion of the acting Commissary-General of Subsistence, be necessary to equip with refrigerating apparatus steamships in addition to those now in the military service so equipped, the party of the second part shall, at their own expense, equip the additional num-

ber that the acting Commissary-General of Subsistence shall require, not exceeding three. The refrigerators to be supplied to these additional ships shall be of such size as the acting Commissary-General of Subsistence shall direct, but of size not less than three hundred thousand (300,000) pounds each, it being understood that the amount of beef of each cargo shall be reasonably commensurate with the capacity of the refrigerating plant aboard the vessel. They
28 shall also at their own expense provide and operate refrigerator buildings at such points in the island of Cuba occupied by the Army of the United States as may be necessary for carrying out the object of this contract, and shall move the same from point to point on the seacoast as may be necessary for the support of moving troops. They shall keep not less than two experts with each cargo on shipboard and after landing and until the beef is delivered to the proper officers of the Government. It being understood that the party of the first part will furnish locations for such refrigerators under military protection, and as near the point of transfer as the commanding general can designate, at which ships carrying the refrigerated meats shall land for the discharge of said shipments. The party of the first part is to furnish free transportation and sell at cost price the necessary subsistence stores on shipboard for two men in charge of the refrigerator on each ship; also to furnish free transportation and sell at cost price the necessary subsistence stores for such men and free transportation for materials and supplies as may be necessary for the construction and operation of such refrigerators in the ports of the island of Cuba as may be required for the proper carrying out of this contract.

III. The fresh beef to be furnished by the party of the second part under this contract shall be of uniform good quality from fat steers, United States Government inspected, weighing not less than six hundred (600) pounds dressed weight per carcass, and shall be refrigerated, chilled, or frozen in quantities according as it shall be called for by the acting Commissary-General of Subsistence, United States Army. It is to be from fore and hind quarter beef proportionally, including all the best cuts thereof; necks cut off at the fourth vertebral joint and breasts trimmed down; shanks of forequarters cut off four inches above the knee joint and of the hindquarters eight inches above the hock joint; necks, shanks, and kindney tallow excluded from delivery. The beef is to be properly clothed by the party of the second part for its protection and proper handling, and so preserved by refrigeration on shipboard and at the refrigerator buildings referred to in article II hereof as that it shall be perfectly good and fit for issue.

IV. All refrigerators, machines, and fittings provided by the party of the second part shall remain the property of said party, and the party of the first part shall furnish steam for hoisting beef and for operating the refrigerating machines on shipboard, but all loading and unloading to be at the expense of the party of the second part,

provided, that the party of the first part shall furnish such lighterage and docking facilities as may be necessary.

V. Any loss from perils of war or from acts of the public enemy shall be borne by the United States and all loss from ordinary perils of the sea and acts of God shall be borne by the party of the second part.

VI. Whenever the fresh beef presented at the steamships or at the refrigerator buildings in the island of Cuba for delivery under this contract is, in the opinion of the receiving commissary, not of the kind, quality, or condition stipulated for, he shall immediately apply to the commanding officer at the point of delivery for a board of officers, to consist of as many members, not exceeding three, as can be assembled. The board shall at once examine the beef presented, and its findings, when approved by the commanding officer, shall be conclusive in regard thereto.

VII. Whenever, because of delay in transportation, unexpectedly light demand for beef by the army in the ports of the island, or other cause not foreseen, there shall be a liability that any of the beef may become stale and unfit for use, the second party's representative shall be privileged, after first obtaining consent of the commanding officer at the point in question, to sell under such conditions as he may prescribe, a portion or all of said beef in the open market, but such action shall be with a view to prevent losses and shall in no wise affect the rights of the parties or their responsibilities for any losses that may occur, which rights and responsibilities shall be determined by the other articles of this contract without regard to this article.

VIII. The said party of the second part shall receive for the fresh beef accepted from them hereunder, ten and ninety-three one hundredths ($10\frac{93}{100}$) cents per pound, to be paid by the commissary at the end of each calendar month or as soon as practicable thereafter, in the funds furnished for the purpose by the United States.

IX. No member of, or delegate to, Congress, nor any person belonging to, or employed in, the military service of the United States, is or shall be admitted to any share or part of this contract, or to any benefit which may arise therefrom.

29 X. The party of the first part, acting for and on behalf of the United States, hereby guarantees the party of the second part that this contract shall be and remain in force for all the refrigerated, chilled, or frozen fresh beef needed by the United States, at posts on the seacoast of the island of Cuba, during the period commencing the ninth day of February, eighteen hundred and ninety-nine, and ending the 30th day of June, eighteen hundred and ninety-nine.

In witness whereof, the party of the first part has hereunto set his hand; and the party of the second part has caused this contract to

be signed in the corporate name by the president and the corporate seal affixed, the date first hereinbefore written.

GEORGE B. DAVIS,
Colonel, U. S. A., Acting Commissary-General of Subsistence.
SWIFT AND COMPANY,
By G. F. SWIFT, *President.*

Witness:
R. S. KEARNEY,
Alex. Co., Va.

Attest:
D. E. HARTWELL, *Secretary.*

(Executed in quintuplicate.)

XXI.

The cities of Habana and Matanzas are seacoast points, and were supplied by refrigerated beef under the contract with Swift & Co., whenever the same was obtainable, and when not obtainable by beef purchased from other parties at the rate of 10 cents per pound, which were slaughtered on the island and stored in the refrigerators. The commissary-general declined and refused to permit the claimant to supply beef at these points.

XXII.

All the beef which was actually supplied by Simpson and received by the United States from him has been duly paid for at his contract price.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the petition be dismissed.

BY THE COURT.

30 V.—*Judgment of the Court.*

GREENLIEF W. SIMPSON
vs.
THE UNITED STATES. } No. 21739.

At a Court of Claims held in the city of Washington on the 4th day of April 1904 judgment was ordered to be entered as follows:

The court on due consideration of the premises finds for the defendants and do order adjudge and decree that the petition of the claimant, Greenlief W. Simpson, be and it is hereby dismissed.

BY THE COURT.

(The court filed no opinion in this case.)

31 VI.—*Application for and Allowance of Appeal.*

GREENLIEF W. SIMPSON
v.
THE UNITED STATES.

Comes now Greenlief W. Simpson, the above named claimant, by his attorney of record, and prays an appeal to the Supreme Court of the United States, from the final judgment of this court dismissing his petition.

A. A. HOEHLING, JR.,
Attorney for Claimant.

Filed April 25, 1904.

Ordered that this appeal be allowed as prayed for.

BY THE COURT.

April 25, 1904.

32 In the Court of Claims.

GREENLIEF W. SIMPSON.
vs.
THE UNITED STATES. } No. 21739.

I, John Randolph, assistant clerk of the Court of Claims, certify that foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the judgment of the court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 29 day of April, A. D. 1904.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,362. Court of Claims. Term No. 264. Greenlief W. Simpson, appellant, *vs.* The United States. Filed May 18", 1904. File No. 19,362.